

**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION**

**Boulder Canyon Project - Post-2017 Application of the  
Energy Planning and Management Program Power Marketing Initiative [74 CFR  
60256-7]**

**Public Comment Forums, January 19-21, 2010**

**COMMENTS OF THE ARIZONA POWER AUTHORITY OF ARIZONA**

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The Arizona Power Authority (Authority) appreciates the opportunity to make these comments today.

1) Authority Governing the Hoover Post-2017 Allocation Process. Section 5(c) of the Boulder Canyon Project Act establishes the statutory requirements applicable to allocation of Hoover power:

“The Secretary of the Interior is hereby authorized under such general regulations as he may prescribe, to contract for...generation of electrical energy and delivery at the switchboard to states, municipal corporations, political subdivisions, and private corporations of electrical energy at said dam.

“General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under Subsection (6) of this section, and in making such contracts, the following shall govern:

(c) “Applicants for purchase of water and electrical energy; preferences.

“Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefore who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Power Act (16 U.S.C. 791a et seq.) as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant shall be

given, first, to a state for the generation or purchase of electric energy for use in the state, and the states of Arizona, California and Nevada shall be given equal opportunity as such applicants". 43 U.S.C. 617d(c).

APA Position: Section 5(c) of the Boulder Canyon Project Act of 1928 governs allocation of power from Hoover Dam. The first priority to that power goes in equal opportunity to the states of Arizona, California, and Nevada. Thereafter the power may be allocated within the Marketing Area primarily pursuant to priorities developed during the 1930's process.

2) Reclamation Law Not Applicable to Allocation Process. Section 18 of the Reclamation Act of 1939 provided that "[n]othing in this Act shall be construed to amend the Boulder Canyon Project Act of 1928 (45 Stat. 1057), as amended." 43 U.S.C. 485j footnote. Certain provisions of reclamation law may apply to the operations of the Hoover Dam so long as those provisions of reclamation law do not conflict with terms of the Boulder Canyon Project Act., 43 U.S.C. 617m.

APA Position: Reclamation law including the preference provisions contained in 43 U.S.C. 485h, is not applicable to the allocation process under the Boulder Canyon Project Act of 1928

3) Application of PMI. Western adopted the Power Marketing Initiative (PMI) of the Energy Planning and Management Program in 1995. (See 10 CFR Part 905.) Western now proposes to apply the PMI to the post-2017 Hoover contracts.

APA Position: PMI cannot apply to extend a federal power contract that expires on a date specific by force of federal law. The current contracts expire by federal law on September 30, 2017 pursuant to Section 105(a)(1)(C)(4)(A) of the Hoover Power Plant Act of 1984. The Department of Energy's Energy Planning and Management Program Power Marketing Initiative regulations only apply to "existing customers with long-term firm power contracts..." 10 CFR 905.32.

To the extent Western disagrees with above the APA recommends that Western address the issue of whether the PMI process applies to allocation of Hoover power prior to initiating the process. Indeed this is in accord with the commitment Western made when it originally published the EPAMP regulations in 1995: "Finally, Western also proposed to evaluate the application of the PMI to Parker-Davis and the Boulder Canyon Project no sooner than 10 years before existing contracts expire". 60 Fed. Reg. 54157 (October 20, 1995).

4) Proposed Marketable Resource and Amount Retained by Current Contractors. The Western Area Power Administration (Western) proposes to market 2,044 MW of contingent capacity with an associated 4,116,000 MWh of annual firm energy. Hoover's contingent capacity rating is currently limited by contract to 1,951 MW, and similarly the current energy amount is 4,527,001 MWh.

APA Position: Western should allocate all of the 2074MW nameplate capacity at Hoover. However Western's proposed reduction in firm energy from current energy

amount of 4,527,001 MWh to 4,116,000 is fine. Under section 5(c) of the Boulder Canyon Project Act of 1928 Western lacks the statutory authority to withhold capacity and associated energy in order create a resource pool.

5) Proper Marketing Area. The marketing area for Hoover Dam power is established by Western's Conformed General Consolidated Marketing Criteria or Regulations for Boulder City Area Projects. 49 Fed. Reg. 50582. The marketing area has been ratified by law by Section 105(a)(1)(C)(4)(C) of the Hoover Power Plant Act of 1984.

APA Position: The Boulder City Marketing Area is established by federal law.

6) Term of Contract. Western proposes to extend current contractors' contracts for 30 years commencing on the day after the expiration date of the current contracts, or October 1, 2017.

APA Position: The original 1930's power contracts let by the Bureau of Reclamation at Hoover Dam were 50-year term contracts. The 30-year term of the existing contract that expires in 2017 was a political compromise written into the Hoover Power Plant Act of 1984. However when those contracts expire in 2017, it is reasonable to go back to the original 50-year terms, and nothing in the Marketing Criteria would prevent that approach, and indeed Western's Resource Adequacy Planning requirements encourage such an approach (and EPAMP program contract limitations also do not apply).

7) Repayable Advances.

APA Position: Western is already committed per the terms of the Implementation Agreement to recover the outstanding capital advances incurred by existing contractors on or before September 30, 2017 during the following five-year period. APA recommends that Western clarify this Implementation Agreement obligation by putting a term referencing and committing any new power contract holder to this obligation.

8) Treatment of Schedule C excess energy. Current law includes a Schedule C that prescribes treatment of excess energy at Hoover Dam. Western's re-marketing proposal does not address this issue.

APA Position: The APA recommends that Western include existing Schedule C provisions in its proposal, and also maintain the existing A,B, and C classifications of power for purposes of the Hoover Post-2017 allocation process.

9) Recognition of Role of APA/CRC. By statute the Arizona Power Authority has exclusive authority to purchase power from Hoover Dam within the State of Arizona, and the Colorado River Commission of Nevada similarly has exclusive authority to purchase power from Hoover Dam within the State of Nevada. 43 U.S.C. 619a(a).

APA Position: Under the Boulder Canyon Project Act of 1928, the Arizona Power Authority and the Colorado River Commission of Nevada each respectively receive their power allocations as agents of a state in its sovereign capacity.

10) No Waiver of Rights. The Hoover Power Plant Act of 1984 contained a provision which expressly preserved rights under the 1928 Act:

“Except as amended by this Act, the Boulder Canyon Project Act of 1928 (45 Stat 1057, as amended, 43 U.S.C. 617 et seq.) as amended and supplemented, shall remain in full force and effect”. Section 103(b) Hoover Power Plant Act of 1984; 98 Stat. 1333.

The Arizona Power Authority appreciates this opportunity to provide comments on Western’s Post-2017 remarketing initiative, and reserves the right to submit further comments and otherwise participate in this proceeding.

Respectfully Submitted,

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